and-consent function or the confirmation function that is given in the Constitution to the Senate, and he jammed these nominees through using what he called his ''recess appointment'' power.

Well, the DC Circuit Court of Appeals said: That is unconstitutional. Mr. President, you cannot do that. The law does not allow it.

But that is another reason why, I suggest, the President is eager to stack this court with people he believes will be more ideologically aligned with his big-government agenda.

Then there was one more decision this past August that I will mention. The court reminded the Nuclear Regulatory Commission of its legal requirement to make a final decision on whether to use Yucca Mountain as a nuclear waste repository. That sounds kind of arcane, but it is very important—certainly to the people of Nevada and to the U.S. national security interests when you talk about a safe and secure location to put nuclear waste.

I would submit that all of these were commonsense rulings for which there is a very sound and broad legal basis, and the court was doing what all courts are supposed to do; that is, uphold the law. Apparently, the administration does not think this court should be in a position to do that, and they do not think they should have to be in a position to follow the law. They do not seem to care that the DC Circuit Court has ruled in favor of the administration on things such as stem cell research, health care, greenhouse gas regulation, and other hot-button issues. They do not seem to care that the court's eight active judges are evenly split between Republican and Democratic appointees. In their view, by upholding the law the DC Circuit has been insufficiently supportive of the Obama agenda, so now they are attempting to pack the court with three unneeded judges in order to stack it in the administration's favor.

I said last week that my colleague from Iowa, Senator GRASSLEY, has offered a commonsense alternative. It is a good compromise, and we have done it before. It would actually reallocate two of these seats on the DC Circuit that are unneeded to other courts in the country where they are needed. What makes more sense than that? We have done that once before. We took one of these positions from the DC Circuit and reallocated it to the Ninth Circuit, where they needed judges before. We ought to be putting the resources where they are actually needed, not stacking them in a court where the resources are not needed in order to pursue an ideological end.

Unfortunately, our friends across the aisle—the majority leader and others—have rejected the Grassley compromise and pushed ahead with their court-packing maneuver. Given their stated desire to make the DC Circuit a liberal rubberstamp, Democrats have created an extraordinary circumstance that justifies the filibuster under the 2005 precedent brought about by the Gang of 14 that I started off with. I wish we had resolved this sooner. I wish my friends across the aisle would give serious consideration to the Grassley proposal. But for now, I am afraid we have reached an impasse, and so we will be voting on this nomination this afternoon.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONDOLENCES TO INHOFE FAMILY

Mr. DURBIN. Mr. President, the Senate family was stunned yesterday with the news that our colleague JIM INHOFE lost his son Perry in a plane crash in Oklahoma. I extend my condolences to JIM, the senior Senator from Oklahoma, and his wife Kay and their family on the loss of their son.

Each year, I always look forward to their Christmas card. It is an amazing gathering which grows by the year. Clearly, it is a strong, large family which takes great comfort in one another's strength. At this moment they will need it having lost one of their own.

I extend my condolences along with those of the Senate family to all of their extended family. I pray that they will have the strength—and I am confident they will—to face this personal and family tragedy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CORNELIA T.L. PILLARD TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The legislative clerk read the nomination of Cornelia T.L. Pillard, of the District of Columbia, to be United States Circuit Judge for the District of Columbia.

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. will be equally divided and controlled in the usual form.

Mr. DURBIN. A few moments ago the Republican whip, Senator CORNYN of Texas, came to the floor to oppose the nomination of Nina Pillard to the DC Circuit Court. Sadly, this did not come as a surprise. It is now clearly a political strategy on the other side to block President Obama's nominees for this important court. There are three vacancies on the DC Circuit. Most people view it as the second most important court in the land, next to the U.S. Supreme Court.

The court has eight active judges. It is authorized to have 11. When there are vacancies in our Federal judiciary, the President has a duty to fill them. President George W. Bush made six nominations for the DC Circuit during his Presidency. Of those six nominees, four were confirmed. President Obama, by contrast, has made five nominations for the DC Circuit and so far only one has been confirmed, a well-qualified gentleman, Sri Srinivasan. Two of President Obama's nominees have been filibustered by the Senate Republicans: Caitlin Halligan and Patricia Millett, two exceptionally well-qualified women.

My colleagues on the other side of the aisle have made it clear they intend to filibuster two more equally well-qualified nominees: Georgetown law professor Nina Pillard and DC District Court Judge Robert Wilkins.

This disparity is very obvious for anyone who cares to compare. President Bush: Six DC Circuit Court nominees; four of them confirmed. President Obama: Five DC Circuit Court nominees; four of them likely filibustered by the Republicans.

This is a troubling contrast. There is no question President Obama's nominees have the qualifications and integrity to serve on this important court. There are absolutely no—underline no—extraordinary circumstances that justify filibustering these nominees. Just a few days ago when the Senate Republicans filibustered Patricia Millett, one of the most distinguished nominees to ever come before the Senate, they ignored the obvious: She has argued 32 cases before the U.S. Supreme Court. Is someone literally going to come and say, oh, but she is not qualified to serve in a Federal court.

Not only that, she had the overwhelming endorsement of Solicitors General of both political parties. Clearly, she is well qualified and has bipartisan support for the job. But it was not good enough for the other side of the aisle. They filibustered her, stopping her nomination.

For those who are new to the Senate, the filibuster is an old trick, an old procedural gambit. What happens is that well-qualified people, and many times substantive legislation, are held up indefinitely or stopped with the use of a filibuster. To do it to an amendment or a bill is bad enough, to do it to a human being is something we should think long and hard about. Her nomination, the nomination of Patricia Millett, was supported by Democratic and Republican Solicitors General. They characterized her as ''brilliant'' and ''unfailingly fair-minded.''